



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This is an application by the tenant for a monetary order for return of double the security deposit and the filing fee for the claim.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing. The parties confirmed they were not recording the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the tenant entitled to a monetary order for return of double the security deposit?

Background and Evidence

The tenant paid a security deposit of \$600.00 at the start of the tenancy on September 1, 2020. The tenant vacated the premises on June 24, 2021. The parties agreed that tenant provided the landlord with a written notice of the forwarding address to return the security deposit on June 25, 2021.

The tenant's agent stated that the landlord did not perform neither incoming nor outgoing condition inspection reports and had extinguished their right to claim against the deposit for damages.

The landlord testified that the tenant caused damage to the rental unit and agreed that the damage would be taken from the security deposit. The landlord stated the amount was not known at the time and the tenant said they could hold the security deposit unit the amounts were known.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the landlord is in breach of the Act.

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) [*tenant fails to participate in start of tenancy inspection*] or 36 (1) [*tenant fails to participate in end of tenancy inspection*].

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

- (a) the director has previously ordered the tenant to pay to the landlord, and
- (b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant **agrees in writing** the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under **subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [landlord failure to meet start of tenancy condition report requirements] or 36 (2) [landlord failure to meet end of tenancy condition report requirements].**

In this case, the landlord had the tenant's forwarding address on June 25, 2021.

By failing to perform incoming or outgoing condition inspection reports the landlord has extinguished their right to claim against the security deposit for damages, pursuant to sections 24(2) and 36(2) of the Act.

The landlord did not have the written consent of the tenant to keep an amount from the security deposit as required by section 38(4)(a) of the Act. Even if a verbal agreement was made this does not satisfy the provisions of section 38(4)(a) of the Act.

Further, even if written permission was given, which it was not, section 38(5) of the act, states 38(4)(a) of the Act does not apply if the liability of the tenant is relation to damage and the landlord's right to claim for damage against a security deposit has been extinguished. This means the landlord is not entitled to even get the written consent of the tenant to retain any portion of the security deposit, as they were not entitled to claim against the security deposit for damages.

The landlord did not return the security deposit to the tenant within the 15 days of receiving the tenant's forwarding address and did not make an application for dispute resolution to claim against the security deposit, for other issues not relating to damages to the property, such as unpaid rent. I find the landlord has breached section 38 of the Act. Therefore, I find the tenant is entitled to double the return of the security deposit pursuant to section 38(6) of the Act. The legislation does not provide any flexibility on this issue.

Conclusion

Having made the above findings, I must order, pursuant to section 38 and 67 of the Act, that the landlord pay the tenant the sum of **\$1,300.00**, comprised of double the security deposit (\$600.00) and the \$100.00 fee for filing this Application.

The tenant is given a formal order in the above terms and the landlord must be served with a copy of this order as soon as possible. Should the landlord fail to comply with this order, the order may be filed in the small claims division of the Provincial Court and enforced as an order of that court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: February 14, 2022

Residential Tenancy Branch